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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,294	12/19/2001	Henk Husken	F7581(V)	1880
201	7590	11/14/2003		
			EXAMINER	
			PADEN, CAROLYN A	
			ART UNIT	PAPER NUMBER
				1761

DATE MAILED: 11/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/025,294	HUSKEN ET AL.
	Examiner	Art Unit
	Carolyn A Paden	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 November 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-,5,8-14 is/are rejected.
- 7) Claim(s) 6 and 7 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4&5. 6) Other: _____

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 contains reference to an HPLC analysis without provided specific information to the solvent or column used in the analysis. Thus it is unclear what specific peak is being referred to. An amendment to the claim inserting the substance of claim 11 into claim 10 would overcome the rejection.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 8 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Cuomo et al (6,358,542).

Cuomo discloses extracting olive oil to enhance the polyphenol content of the oil. In example 12, olive pulp is treated with an acidic aqueous extraction that includes an extraction with 0.5 M HCl, under

reflux for about 1 hour. Then the oil is separated from the solids by filtration. Although no pH is shown in the patent, it is well known in the art pH is derived from hydrogen ion concentrations, with neutral pH of 7 having a hydrogen ion concentration of 1×10^{-7} . Thus with the hydrogen ion concentration in hand, one of ordinary skill in the art would have expected that the pH of the acid to fall within the range that is set forth in the claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 8-11 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cuomo.

Cuomo discloses extracting olive oil to enhance the polyphenol content of the oil. In example 12, olive pulp is treated with an acidic aqueous extraction that includes an extraction with 0.5 M HCl, under reflux for about 1 hour. Then the oil is separated from the solids by filtration. Although no pH is shown in the patent, it is well known in

the art pH is derived from hydrogen ion concentrations, with neutral pH of 7 having a hydrogen ion concentration of 1×10^{-7} . Thus with the hydrogen ion concentration in hand, one of ordinary skill in the art would have expected that the pH of the acid to fall within the range that is set forth in the claims.

Claims 10 and 11 are related to an oil that has a particular HPLC analysis that shows a specific peak among the hydroxytyrosol moieties, which represents polyphenol. Since the reference to Cuomo shows an olive oil that has enhanced polyphenol content, one of ordinary skill in the art would have expected that the olive oil of Cuomo to show the required peak in the required location of the claims. The fact that applicant may have analyzed the polyphenols in the sample by a different method does not alter the fact that the same olive oil composition is being analyzed.

Claims 1, 4, 5, 8, 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Maitland (WO 01/83,654).

Maitland discloses processing olives to enhance the polyphenol content. Here olives are crushed in water treated that contains citric acid as a processing aid. Then malaxation of the olive paste is carried out for 10-90 minutes at about 30 minutes (see page 5). The

solid matter is removed by centrifugation. At page 8, the olive paste is formulated into foods like mayonnaise and sauces.

Claims 10-14 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Maitland (WO 01/83,654).

Maitland discloses processing olives to enhance the polyphenol content. Here olives are crushed in water treated that contains citric acid as a processing aid. Then malaxation of the olive paste is carried out for 10-90 minutes at about 30 minutes (see page 5). The solid matter is removed by centrifugation. At page 8, the olive paste is formulated into foods like mayonnaise and sauces.

Claims 10 and 11 are related to an oil that has a particular HPLC analysis that shows a specific peak among the hydroxytyrosol moieties, which represents polyphenol. Since the reference to Maitland shows an olive oil that has enhanced polyphenol content, one of ordinary skill in the art would have expected that the olive oil of Maitland to show the required peak in the required location of the claims. The fact that applicant may have analyzed the polyphenols in the sample by a different method does not alter the fact that the same olive oil composition is being analyzed.

Claims 6 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Carolyn Paden
CAROLYN PADEN 11-7-03
PRIMARY EXAMINER
GROUP 1800 (761)